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SUBJECT: TRANSITIONAL JUSTICE NGO COMMENTS ON DE-BA'ATH LAW

Classified By: Deputy Chief of Mission Patricia A. Butenis for reason 1 .4 (b) and (d).

¶1. (C) Summary: The International Center for Transitional Justice, a U.S.-based NGO, has delivered an analysis of the Law of Accountability and Justice to the GOI and CoR leadership that criticizes the current draft. The analysis warns the CoR that the draft will not further national reconciliation and that the newly formed commission would be subject to political whimsy. Post assesses that the analysis provides ammunition that opponents of the current draft could seize upon to object to quick passage. The ICTJ has indicated that it has already delivered the analysis to the President, both Vice Presidents, the entire Prime Ministerial council, and the CoR leadership; in addition, it plans to deliver the letter to all parliamentarians. It would not be surprising if discussion of de-Ba'ath reform centers around some of these issues when the CoR reconvenes. While the CoR leadership's momentum and understanding of the need to pass the law are high, we may see significant debate and further amendments to the draft based on these ideas. End Summary.

¶2. (U) The International Center for Transitional Justice (ICTJ) provided us with a copy of a letter submitted to CoR Speaker Mashadani and other GOI officials containing the NGO's analysis of the Law of Accountability and Justice. The ICTJ analysis asserts that passage of the current draft law will not further the aims of reconciliation and that fundamental problems remain with its implementation. Appropriate portions of the letter are reprinted below.

¶3. (U) Begin Text:

The International Center for Transitional Justice (ICTJ) is a non-governmental organization that assists countries and societies pursuing accountability for past mass atrocities or human rights abuse.

One of the Center's areas of expertise is the reform of abusive government institutions including the vetting of public employees. Vetting seeks to exclude from public service those who have committed serious human rights abuses or been involved in gravely corrupt practices.

The Center has monitored Debaathification closely since 2003. We held a major seminar with Iraqi policymakers and international experts in April 2007, and also wrote to policymakers in June 2007 regarding flaws in the draft laws to revise Debaathification that were then in circulation.

The Center recognizes several improvements in the most recent draft of the "Justice and Accountability" law when compared to previous versions. In particular, we commend the effort to put a strict timeline on exclusion and readmission procedures, as well as the envisaged dissolution of the Higher National Debaathification Commission.

Despite these improvements, the new drafts contain a number of serious shortcomings. We are writing to you now to bring

some of the most important of these to your urgent attention.

We fear that if these flaws are not addressed they could create serious problems in the implementation of the law.

In particular, the most recent draft contains the following serious shortcomings:

- The draft continues to give the new Commission multiple aims. No single organization can or should fulfill all these functions; each requires its skills, resources, and institution. We recommend that the Commission focus on one or two key tasks, such as the exclusion of wrongdoers from government institutions. Other tasks, such as the preservation of historical memory, should be allocated to other institutions. New institutions should be established if necessary.

- The new Commission does not have sufficient independence. It will be vulnerable to political manipulation because of its very strong links to the Council of Representatives, who will have very great influence over the selection of Commissioners and the Commission's Chairman. We recommend the Commission be constituted in such a manner that would protect it more strongly from day-to-day politics and give it greater legitimacy amongst the wider public.

- We note that the Commission's powers of enforcement are not clearly specified. Unclear powers may mean that enforcing decisions will be difficult. Or it may mean the Commission will use the lack of clarity to claim excessive powers or abuse them. The legislature should clearly specify what measures the Commission is able to take in order to enforce its decisions.

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- We understand that the Council of State has recommended that provisions related to the Supreme Cassation Panel be deleted from the draft law because these provisions threaten the independence of the judiciary. We agree. It is vital you consult with the Supreme Council of the Judiciary so that an impartial cassation panel may be created that is practically, legally, and financially independent of the new Commission.

- We understand the Council of State has recommended that provisions related to the creation of a prosecutor's office be deleted from the draft because these provisions threaten the independence of the judiciary. Again, we agree. There is the risk that a very powerful mechanism is created with insufficient controls that may do great damage in the future.

We urge you to consult with the Supreme Council of the Judiciary so that an impartial and effective investigative mechanism be created. We continue to suggest that the prosecutor's office be changed to some kind of mechanism that could refer allegations of wrongdoing to a specialized unit within the regular justice system.

- There are still no basic fairness guarantees in the law. To meet international legal standards, we strongly recommend that people subject to the process should:

-- receive reasonable notice of the case against them prior to dismissal or exclusion from retirement benefits;-- be informed of the specific allegations against them;-- be able to examine the evidence used to draw up that allegation;-- have the right to contest that evidence in a hearing in front of a legally constituted and impartial body;-- be evaluated according to known and reasonable criteria; and,-- be able to appeal an adverse decision to an impartial entity that is independent of the body that conducted the vetting hearing.

- The law creates several mechanisms to collate, organize, and publish personal information about many thousands of individuals. Some of this information is very sensitive, but the law contains no controls as to who can obtain access to

it. Therefore, it will be easy to spread false information, or corrupt persons may use the information for blackmail. Such issues have created severe problems in the former East Germany and elsewhere. We recommend that strict procedures are put in place so that sensitive information and materials gathered by the new Commission be protected against misuse.

- The new law will create a new Accountability and Justice Commission and dissolve the Higher National Debaathification Commission. But the draft appears to lack any arrangement for the new Commission to take over the files, information, and other relevant resources of the Debaathification commission.

- We urge you to put in place well-designed selection, appointment, promotion, and disciplinary procedures for all public positions, based on merit and integrity. Iraq still lacks mechanisms to prevent the appointment of or to discipline government employees who are unfit for public service but were not members of the dissolved Ba'ath party. Such procedures would prevent individuals who have committed severe human violations from being appointed to government service, or provide for their dismissal if he or she already holds a government position. Such selection, appointment, promotion, and disciplinary procedures are vital for Iraq's future.

- Finally, we note that the system envisaged in the draft law continues to be based on group membership rather than individual wrongdoing. Such programs are only partially effective because they use the wrong criteria to catch wrongdoers: they are too wide (dismissing innocents who were members but not involved in serious wrongdoings) and too narrow (failing to dismiss those abusers who were not members). They create resentment, are unfair, and lack credibility. The new draft changes the number of people affected, but it does not tackle this fundamental problem in a serious manner.

Iraq has taken some important steps to deal with its past, but they have not been well-coordinated. We strongly recommend that you develop a coherent strategy to address victims' suffering, deal with the past and prevent the repetition of abuses in the future. Such a strategy could link compensation, prosecution, truth-telling and vetting efforts, and so improve accountability and justice for all Iraqi victims, and contribute to social reconstruction and the rule of law.

End Text
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